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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/636,272	08/10/00	JUDGE	A 0275S-000379

WM01/0226  
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EXAMINER

LIEU, J

ART UNIT

PAPER NUMBER

2632

DATE MAILED:

02/26/01

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

File Copy

<b>Office Action Summary</b>	Application No. 09/636,272	Applicant(s) JUDGE, ALFRED H.	
	Examiner Julie Lieu	Art Unit 2632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 August 2000.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-18, and 20-24 is/are rejected.
- 7) ☒ Claim(s) 7 and 19 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4, 8-12, 16, and 20-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The independent claims of these claims recite that the electrical contacts are coupled to the rotating member; however, in claims 4 and 16, the electrical contacts are coupled to the housing. Therefore, it is not clear how the contacts can be coupled to both.

Further, there is not annular contacts coupled the housing. Drawings 1-3 do not illustrate that either. Clarification or correction is required.

In claims 8 and 20, it is not clear that the electrical contacts are the ones that coupled to the housing or the rotating member?

### *Drawings*

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the conductive conical members

acting as electrical contacts must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Bein et al. (US Patent No. 4,703,315).

Claim 1:

Bein et al. discloses a

- a. a housing, a cavity in said housing (fig. 1)
- b. a rotating member 46 in said housing moving in the cavity such that the rotating member seeks an equilibrium position which corresponds to a horizontal or vertical plane;
- c. electrical contacts 52, 58 coupled with said rotating member and only completing an electrical circuit when said rotating member is in the equilibrium position;
- d. an indicator 30,32 electrically coupled with said electrical contacts for indicating to a user when the mechanism is in an equilibrium position; and

- e. a power source 18 coupled with said electrical contacts and said indicator for energizing said indicator when said electrical circuit is complete.

*Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 2-3 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bein et al. (US Patent No. 4,703,315).

Claim 2:

The rotating member 46 is being fixed for rotation about a center axis 48 in the cavity in said housing. The housing 11 is rectangular in shape. However, one skilled in the art would

have readily recognized using an appropriate shape of a housing the for the leveling device in Bein depending on its application but the shape of the housing for the device would not alter the function of the leveling device.

Claim 3:

The rotating member 46 includes a biased electrical contact 52 or 58. Col. 6 lines 23-27.

Claim 5:

The rotating member 46 could be manufactured from an electrically conducting material. Col. 5 lines 47-51.

Claim 6:

The rotating member 46 is partially cylindrical. It is not totally cylindrical and does not have at least one projecting member. However, one skilled in the art would have readily recognized that the rotating member in Bein without the projecting member would be functionally equivalent with the claimed cylindrical rotating member.

9. Claims 13-15 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jansky (US Patent No. 1,141,151) in view of Bein et al. (US Patent No. 4,703,315).

Claim 13:

Jansky discloses

- a. a housing 14
- b. a motor within said housing (the drill 10 in Jansky is a power tool)
- c. an output coupled with said motor;
- d. 5 an activation member for energizing said motor for rotating said output;

- e. a power source electrically coupled with said motor and said activation member;

Jansky also discloses a leveling mechanism. Jansky fails to disclose the leveling mechanism to be one with electrical contacts. However, Bein teaches a level-indicting device for use by workman to adjust workpiece and suggests the use of an electrical level-indicating device to be an improvement over bubble leveling indicator. In light of Bein's teaching and as technology advances, it would have been obvious to one skilled in the art to use the device taught in Bein in place of the bubble leveler in Jansky because it is a more sophisticated indicating device which accurately indicate either the horizontal or vertical position of the power tool.

The level indicator in Bein includes:

- a. a housing, a cavity in said housing (fig. 1)
- b. a rotating member 46 in said housing moving in the cavity such that the rotating member seeks an equilibrium position which corresponds to a horizontal or vertical plane;
- c. electrical contacts 52, 58 coupled with said rotating member and only completing an electrical circuit when said rotating member is in the equilibrium position;
- d. an indicator 30,32 electrically coupled with said electrical contacts for indicating to a user when the mechanism is in an equilibrium position; and
- e. a power source 18 coupled with said electrical contacts and said indicator for energizing said indicator when said electrical circuit is complete.

Claim 14:

The rotating member 46 is being fixed for rotation about a center axis 48 in the cavity in said housing. The housing 11 is rectangular in shape. However, one skilled in the art would

have readily recognized using an appropriate shape of a housing the for the leveling device in Bein depending on its application but the shape of the housing for the device would not alter the function of the leveling device.

Claim 15:

The rotating member 46 includes a biased electrical contact 52 or 58. Col. 6 lines 23-27.

Claim 17:

The rotating member 46 could be manufactured from an electrically conducting material. Col. 5 lines 47-51.

Claim 18:

The rotating member 46 is partially cylindrical. It is not totally cylindrical and does not have at least one projecting member. However, one skilled in the art would have readily recognized that the rotating member in Bein without the projecting member would be functionally equivalent with the claimed cylindrical rotating member.

*Allowable Subject Matter*

10. Claims 7 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.



Art Unit: 2632

*Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Grant, US Patent No. 5,767,467, discloses a gravity actuated electrical switch.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie Lieu whose telephone number is 703-308-6738. The examiner can normally be reached on Mon-Thurs, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Hofsass can be reached on 703-305-4717. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-6743 for regular communications and 703-308-6743 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



Julie Lieu  
Primary Examiner  
Art Unit 2632

jl  
February 23, 2001